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Independent Cellular Services Association

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September 14, 1995

William F. Canton
Acting Secretary
Federal Communications Commission
1919 M Street, NW -- Room 222
Washington, DC 20554

Ex Parte Communication: Docket No. 92-115

Dear Mr. Canton:

The attached communication was sent to Deputy Commissioner Blair Levin, June 28, 1995. I apologize for the oversight of not having sent this to your office at an earlier date.

Sincerely,



Ron Foster
President

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Mr. Blair Levin
Deputy Commissioner
Federal Communications Commission
1919 M St., NW
Washington, DC 20554

Dear Mr. Levin,

Mr. Mike Heavener, our vice president, has informed me of the meeting conducted by your office on July 6, 1995 regarding 47 C.F.R. 22.919. I want to express my appreciation for your open-mindedness regarding this important issue for both small business and the consumer. Our Association is committed to an amicable solution that addresses the needs and concerns of all parties. We believe that the principles of the Carter-Phone decision, apply to this circumstance. The real issue here is not about fraud. It is about economics and the desire of the carriers to keep any competition out of the cellular market.

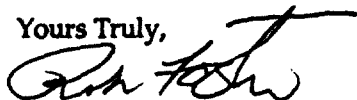
With the admission by Mr. Markendorff that the Wireless Telecommunications Bureau lacks the expertise to address the technical issues of 47 C.F.R. 22.919, we respectfully suggest and recommend that an independent special master be appointed, should it become impossible to bring this matter to a successful conclusion at the forthcoming meeting, July 27, 1995. I believe doing anything else would compromise the integrity of the Commission. Certainly, depending only upon the carriers and CTIA for information creates a clear bias. We feel this is exactly what has happened to date. This bias was also demonstrated by the document authored by Ms. Rosalind Allen and submitted to congress, requesting that changing an ESN or using a modified phone be a felony! We found this action incredible, especially since the final ruling on the Petition for Reconsideration has not been finalized. This leads me to believe that the Bureau has been acting in bad faith.

Furthermore, I am formally requesting that your office issue a stay of enforcement to the comment section of 47 C.F.R. 22.919, pending a resolution of this matter. The comment section bears no resemblance to the published document and therefore did not permit the public an opportunity to comment on this important issue. As published November 17, 1994, attention is directed only toward the manufacture and design of the ESN chip. No mention was made with regard to ESN changes, illegal transmitters, etc. The comment section contains many contradictions and at one point even delegates type acceptance to the carriers! Some carriers are assuming an aggressive posture and using the wording found in the comment section to close businesses providing "extension phone" service to registered subscribers. This seems grossly unfair in light of the fact that the FCC has never enforced any part the new rule or the past rule, 22.915. The rules are specific about the manufacture and design of the ESN chip. Manufacturers continue to produce cellular phones that do not meet the FCC's rules and the Wireless Telecommunications Bureau continues to ignore these violations. For example, Motorola still produces phones with easily modified ESN's. Allowing the continued proliferation of these types of telephones only exacerbates the problem. It also creates a scenario whereby the consumer pays for higher cellular service due to fraud resulting from gross violations by the manufacturers and endorsements of these instruments by the CTIA.

The CTIA estimates that the cellular industry loses approximately 300 million dollars annually to all fraud. It seems to me that the first step in reducing fraud is to produce telephones that cannot be modified. Eventually, the fraud problem would correct itself. The easiest and most economical means of combating fraud is the implementation of PIN's. Depending upon the ESN as a security measure has obviously failed. It is too late to put the horse back into the barn!

I am hopeful that I will have the opportunity to meet you in the near future. In the meanwhile, if I can be of service to your office please contact me at your convenience.

Yours Truly,

A handwritten signature in black ink, appearing to read "Ron Foster", with a stylized flourish at the end.

Ron Foster
President